***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

+WRIT PETITION No.6934 of 2007

% 13-4-2007

J.Jayalalitha, Chennaiah

...Petitioner

AND

$ The Secretary to Government of Andhra Pradesh, Revenue Department, Secretariat, Hyderabad and others.

...Respondents

! COUNSEL FOR PETITIONER: Sri L.Nageswara Rao

^ COUNSEL FOR RESPONDENTS: Government Pleader for Revenue (Assignment)

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>HEAD NOTE:

? CASES REFERRED:

1. AIR 1955 SC 233
2. AIR 1955 SC 661
3. AIR 1967 SC 1274
4. (2003) 8 SCC 134
5. (2004) 3 SCC 440

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13 .4.2007

Between:

J.Jayalalithaa, Chennai

… Petitioner

AND

The Secretary to Government of Andhra Pradesh,
Revenue Department, Secretariat, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6934 of 2007

ORDER:

M/s.Natya Kala Niketan, a partnership firm, at 8/1 Siva Gnanam Road, T.Nagar, Madras – 17, had purchased an extent of Ac.3.20 gts in survey No.93/voo and an extent of Acs.1.15 gts in survey No.93/ru situated at Pet Basheerabad village of Medchal Mandal in Ranga Reddy District under a registered sale deed dated 07.6.1968 from M/s.Cherukuru Suryanarayana Raju, Radha Krishna Raju, Venkata Vijaya Rama Raju and Venkata Ravi Prasada Raju. Under the same sale deed, the said firm purchased another extent of Acs.4.00 in survey No.52/A situated at Jeedimetla village. The said firm also purchased an extent of Acs.3.15 gts in survey No.93/ee situated at Pet Basheerabad village under registered sale deed from M/s.Kummari Durgaiah and Kummari Balaiah. Be it noted that the petitioner and her mother were the two partners of M/s.Natya Kala Niketan. After expiry of her mother on 02.11.1971, by necessary mutation proceedings, petitioner was recorded in the revenue accounts as owner. Petitioner alleges that before the sale was effected in favour of the firm, permission under Sections 47 and 48 of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (the Tenancy Act, for short) was obtained from the then Tahsildar, Medchal, and that after coming into force the Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act, for short), the Government of Andhra Pradesh issued G.O.Ms.No.974, dated 22.9.1992, exempting these lands from the purview of ULC Act.

Third respondent herein, namely, Deputy Collector and Mandal Revenue officer issued notice in Form-I under Rule 3 of Andhra

Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 (the Rules, for short). The petitioner was asked to show cause as to why she should not be summarily evicted from the land as she is "*found to have the assigned lands in contravention of the provisions of subsection (2) of Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977*" (the Act, for brevity). The said notice bearing No.A/477/2007, dated 24.1.2007 reads as under.

GOVERNMENT OF ANDHRA PRADESH
REVENUE DEPARTMENT

Office of the Deputy Collector &
Mandal Revenue Officer,
Quthbullapur Mandal.

No.A/477/2007 Dated:24.1.2007

FORM - I

Notice under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977.

To
Kum.Jayalalitha, D/o.Jayaram
R/o.J.J.Garden, Pet Basheerabad village,
Hyderabad – 55.

Whereas, you are found to have the assigned lands specified in the schedule below, in contravention of the provisions of sub-section (2) of Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977:

You are hereby directed to show cause within fifteen days of receipt of this notice as to why you should not be summarily evicted from the said land/lands and as to why any crop or other product raised on the land/lands and any building or other construction erected or anything deposited thereon should not be forfeited.

THE SCHEDULE

Name of village	Sy.No. & Sub-Division	Description of land	Entire extent Ac.gts	Occu-pation Ac.gts	Nature of occupation

Pet-Basheerabad	93/ee	Assigned land	3.20	3.20	The lands in Sy.No.93 is classified as Kancha i.e. Government grazing as per Sethwar and it has been assigned to landless poor person during 1956-58 as per chasala pahani. You, namely, Kum. Jaya Lalitha, have occupied by way of purchase for an extent of Ac.8.10 gts in Sy.No.93 from the original assignee and their legal heirs namely Kummari Rama Swamy for extent Ac.3.15 gts in Sy.No.93/ in the year 1979-80 and from Sri Yerra Sailoo for an extent of Ac.3.20 gts in sy.No.93/ in the year 1978-89 and another Ac.1.15 gts in Sy.No.93/1/ from Ch.Surya Narayana Raju who has purchased from Dappu Pochaiah who is original assignee.
	93/ou	-do-	3.15	3.15	
	93/ru	-do-	1.15	1.15	

After receiving the notice, the petitioner got issued an interim reply dated 05.2.2007 through her advocate raising objections as to tenability of above notice and also denying the allegation that the petitioner is found to have assigned land. Expressing inability either to give effective reply or to effectively participate in the enquiry, the petitioner sought necessary assignment particulars including copy of assignment order. In response thereto, the third respondent issued a communication to the petitioner described as notice. The said reply/ notice of the third respondent dated 22.2.2007 purportedly gave the summary of the transactions in respect of the assigned lands in survey No.93 and also informed that as per Sethwar (original settlement record), Sesala pahani for 1955-1958 and Faisal Patti for 1977, the land is assigned land. The enquiry was posted on 06.3.2007 at 11.00 am.

An advocate of the petitioner appeared before the third respondent on 06.3.2007 and submitted a memo requesting to furnish

documents and details about certain aspects. The matter was therefore adjourned to 26.3.2007. The petitioner submitted yet another memo to third respondent pointing out that documents sought were not furnished to her and informed that it is not possible to file counter by 26.3.2007. In response thereto the third respondent sent a communication dated 20.3.2007 informing the petitioner that the copies of all the documents were furnished to her Counsel vide communication dated 22.2.2007. While doing so, the third respondent also enclosed a copy of G.O.Ms.No.1142, dated 8.6.1954. Be that as it is, advocate for the petitioner appeared before third respondent on 26.3.2007. A memorandum was submitted reiterating that the petitioner is an absolute owner and that proceedings initiated under the Act are unjustified. Some more documents were sought. The third respondent allegedly pleaded helplessness saying that he is required to complete the enquiry on that day itself. However the matter was posted for 'final hearing' on 09.4.2007. Alleging that the third respondent has pre-determined mindset and that without there being any record of actual assignment or conditions of such assignment, action is initiated against the petitioner without jurisdiction, the instant writ petition is filed seeking a writ of Prohibition restraining the third respondent from conducting enquiry pursuant to notice dated 24.1.2007.

Sri L.Nageswara Rao, learned Senior Counsel for the petitioner submits that the third respondent inherently lacks jurisdiction to invoke the Act and the Rules. He argued that the jurisdiction under Section 4 of the Act to resume the land is attracted only when the land is assigned by the Government to a landless poor person under relevant Rules with a condition of non-alienation. The land purchased by the petitioner even according to the communication dated 22.2.2007 was assigned under Laoni Rules and, therefore, the condition of inalienability cannot be readily presumed in the absence of the assignment order. He submits that in spite of repeated requests, the third respondent did not furnish necessary record including the assignment order. Secondly, he would urge that the land in survey No.93 is classified as Kancha land in which event such land could not have been assigned as per the guidelines contained in G.O.Ms.No.1142, dated 18.6.1954. Lastly he would contend that even assuming that the land is assigned land, in the absence of condition of non-alienability, the third respondent has no jurisdiction to initiate any action by issuing a notice in Form-I and Rule 3 of the Rules. He placed reliance on an unreported judgment of this Court in **Dasari Narayana Rao v The Deputy Collector and Mandal Revenue**

Officer, Serilingampalli, RR District[1]. Reliance is also placed on **Hari Vishnu Kamath v Ahmad Ishaque**[2], **Bengal Immunity Co. Ltd., v State of Bihar**[3], **Govind Menon v Union of India**[4] and **Thirumala Tirupati Devasthanams v Thallapaka Ananthacharyulu**[5] to support his contention that when the necessary jurisdictional facts are conspicuous by absence, the Court can enquiry into these facts and issue a writ of Prohibition restraining the authority from exercising jurisdiction which does not inhere in such authority.

Opposing the writ petition, Sri Seshagiri Rao, learned Government Pleader for Revenue (Assignment) submits that after receiving the show cause notice the petitioner appeared before the authority twice and as required by her all the documents were supplied. In the communication sent by the third respondent, it was also specifically referred to that relevant records would show that the land is assigned land and, therefore, the third respondent has jurisdiction under the provisions of the Act. He also placed reliance on the decision of the Supreme Court in **Special Director v Mohd. Ghulam Ghouse**[6] and submits that a writ petition against a show cause notice would not lie. Basing on the revenue records, he submits that the land admeasuring Acs.3.15 gts in survey No.93/ou was assigned to Kummari Ramaswamy, the land admeasuring Acs.1.15 gts in survey No.93/ru was assigned to Dappu Pochaiah, and the land admeasuring Acs.3.20 gts in survey No.93/ee was assigned to one Yerra Sailoo. The legal heirs of the assignees or the purchasers from such legal heirs were the vendors of the petitioner and having found that she is in occupation of the assigned land in contravention of the provisions of the Act and the Rules, the impugned notice was issued.

A writ of Prohibition shall issue from this Court only when the public/statutory/judicial authority exercises jurisdiction which does not vest. This Writ prevents inferior tribunal or public authority from usurping jurisdiction. Writ of Prohibition is neither granted *ex debito justitiae* nor as a matter of course. If there is lis in regard to jurisdictional facts, lack of jurisdiction is readily assumed. A person who is called upon to explain and participate in the enquiry can as well raise question of jurisdiction before such authority alone, but cannot seek a writ of Prohibition. Janes L.High in his 'Treatise on Extraordinary Legal Remedies'[7] elucidates these aspects thus;

> "Writ of Prohibition may be defined as extraordinary judicial Writ, issuing out of a court of superior jurisdiction and

directed to an inferior court, for the purpose of preventing the inferior tribunal from usurping a jurisdiction with which it is not legally vested. The object of Writ is to restrain subordinate judicial tribunals of every kind from exceeding their jurisdiction." **It does not lie for grievances which may be redressed, in the ordinary course of judicial proceedings, by appeal**. It is not a writ of right, granted *ex debito justitiae* but rather one of sound judicial discretion, to be granted or withheld according to the circumstances of each particular case. This writ has to be used with great caution and forbearance for furtherance of justice and to secure order and regularity in judicial proceedings, when none of the ordinary remedies provided by law are applicable.[8]

Writ of Prohibition cannot be granted except in a clear case of want of jurisdiction in the Court whose action is sought to be prohibited and to warrant issue of Writ of Prohibition the petitioner must clearly show that an inferior Court is about to proceed in a matter over which it has no jurisdiction.[9]

> The Writ of Prohibition is preventive rather than corrective remedy, and it issues only to prevent the commission of a future act and not to undo an act already performed. When, therefore, the proceedings which it is sought to prohibit have already been disposed of by the Court, and nothing remains to be done either by the Court or by the parties, the cause having been absolutely dismissed by the inferior tribunal, prohibition will not lie[10]. Like all other extraordinary remedies, prohibition is granted only in cases where the usual and ordinary forms of remedy are insufficient to afford redress. In view of this, the writ will not be allowed to take the place of an appeal, nor will it be granted as an exercise of purely appellate jurisdiction. In all cases, **therefore, where the party aggrieved may have ample remedy by an appeal from the order or judgment of the inferior court, prohibition will not lie**[11].
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> (emphasis supplied)

Prof. S.A.de Smith opines as under.

"Historically, the orders of certiorari and prohibition have had so many characteristics in common that they may be discussed together. The one significant difference between them is that prohibition may, and usually must, be invoked at an earlier stage than certiorari. Prohibition will not lie unless something remains to be done that a court can prohibit. Certiorari will not lie unless something has been done that a court can quash."[12]

The learned revising authors of De Smith's classic also stated that

if want of jurisdiction is apparent, prohibition may be applied for at once and if want of jurisdiction not apparent the applicant must wait until the Tribunal has actually stepped outside its jurisdiction, but an applicant who has been guilty of delay maybe refused the relief of prohibition. Further, as already noticed, prohibition is a remedy strictly concerned with excess of jurisdiction though modern public law deal certiorari and prohibition together. In ***R v North ex parte*** **Oakey**[13], Lord Justice Atkin observed as under:

> "I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction."

In **Hari Vishnu Kamath** (supra), the distinction between Writ of Prohibition and Writ of Certiorari was noticed by a Constitution Bench of Supreme Court as under:

> "But there is one fundamental distinction between the two writs, and that is what is material for the present purpose. They are issued at different stages of the proceedings. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for a writ of prohibition, and on that, an order will issue forbidding the inferior court from continuing the proceedings. On the other hand, if the court hears that cause or matter and gives a decision the party aggrieved would have to move the superior court for a writ of 'certiorari', and on that, an order will be made quashing the decision on the ground of want of jurisdiction."

In **Thirumala Tirupati Devasthanams** (supra), explaining the scope of writ of prohibition the Supreme Court laid down as under.

> A writ of prohibition is normally issued only when the inferior court or tribunal (*a*) proceeds to act without or in excess of jurisdiction, (*b*) proceeds to act in violation of the rules of natural justice, (*c*) proceeds to act under law which is itself ultra vires or unconstitutional, or (*d*) proceeds to act in contravention of fundamental rights. The principles, which govern the exercise of such power, must be strictly observed. **A writ of prohibition must be issued only in rarest of rare cases. Judicial discipline of the highest order has to be exercised whilst issuing such writs. It must be remembered that the writ jurisdiction is original jurisdiction distinct from appellate jurisdiction. An appeal cannot be allowed to be disguised in the form of a writ. In**

other words, this power cannot be allowed to be used "as a cloak of an appeal in disguise". Lax use of such a power would impair the dignity and integrity of the subordinate court and could also lead to chaotic consequences.

(emphasis supplied)

It is thus well settled that a person has to substantiate the right to obtain a writ of Prohibition from a Court of judicial review by demonstrating total lack or absence of jurisdiction to proceed on the part of the officer/authority complained against. Merely because there are incorrect or inadvertent particulars issued in the notice of enquiry, the same cannot be a ground for conclusively presuming that enquiry initiating authority lacks jurisdiction. As observed by the Supreme Court in **Thirumala Tirupathi Devasthanams** (supra), the power to issue writ of Prohibition should be used sparingly.

In 'Form-I notice' while furnishing particulars of land and nature of occupation, the third respondent gave necessary indication that the land was initially assigned to Kummari Ramaswamy, Yerra Sailoo and Dappu Pochaiah. It was also alleged that the petitioner purchased the land from the legal heirs of Kummari Ramaswamy, from Yerra Sailoo and from Ch.Suryanarayana Raju, who purchased the property from Dappu Pochaiah (original assignee). Such information was based on the revenue record like Sethwar, Sesala pahani and Faisal Patti. Whether such information was in fact made based on the record or not is certainly matter of enquiry before the authority at the time of evaluation of jurisdictional facts. Mere suspicion that the land assigned originally was not encumbered by condition of inalienability on the premise that the assignment was under Laoni Rules is no ground to contend that inherent lack of jurisdiction voids the probe. Indeed in the preliminary reply as well as subsequent objections/memos filed by the petitioner, what all requested was clarification regarding assignment and conditions of such assignment which were statedly furnished to the petitioner. Therefore the submission that the third respondent suffers from inherent lack of jurisdiction warranting a writ of Prohibition is misconceived.

If a person is found to have assigned lands in contravention of Section 3(2) and (3) of the Act, the District Collector or authorized officer can initiate action by issuing a notice in Form-I under Rule 3 of the Rules. Section 4(3) of the Act contains a presumption to the effect that until contrary is proved person in possession of assigned land is presumed to be in possession in contravention of provisions of Section 3(1) of the Act. Therefore, whenever notice is issued in Form-I, in the

absence of *ex facie* material Court cannot readily assume that land is not assigned or such assignment was without condition of inalienability.

When action is initiated and a notice in Form-I is issued to the person in occupation of the assigned land, the possible defences could be (i) that the land in possession of the recipient of the notice is not assigned land; (ii) that there was no transfer of assigned land as contemplated under Section 3(2) of the Act; (iii) that assigned land was purchased by landless and poor person in good faith for valuable consideration from the original assignee; (iv) that Section 6 of the Act exempts the transfer of land from the provisions of the Act; (v) that the transfer of assigned land was permitted by the District Collector under Section 5 of the Act; and (vi) that the land was assigned without condition of non-alienation. There could also be an objection to such notice that in an earlier enquiry authorities already treated the land as not covered under the Act. In all these situations, it is certainly a matter for enquiry by the authorized officer and lack of jurisdiction cannot be presumed readily. Even where the case does not fall under Sections 3(2), 5 and 6 of the Act still unless and until enquiry is conducted as contemplated under the Act and the Rules, no conclusion can be drawn. As the enquiry is still pending before the third respondent, it would not be proper for this Court to make any observations or record passing remarks on the nature of the land or the nature of occupation of the land by the petitioner. These are the matters for enquiry before the third respondent.

The unreported decision in **Dasari Narayana Rao** (supra) is of no assistance to the learned Senior Counsel. A perusal of the first paragraph of the said judgment itself would show that the petitioners therein approached this Court after suffering an order before the original authority (MRO), which was confirmed by the appellate as well as revisional authorities. It was not a case where writ of Prohibition was sought. Secondly, as found by this Court the notice in Form-I issued to the petitioners therein was bereft of any facts. Therefore, this Court observed that the notice should assert that there was assignment of land and that the deed of transfer under which the assigned land was acquired is invalid. Both these were absent in the said case and, therefore, this Court invalidated the order of the original authority as well as the appellate authority and revisional authority, while giving liberty to the authorized officer to issue show cause notices afresh and take action under the provisions of the Act. *Prima facie* this Court is satisfied that the show cause notice issued to the petitioner satisfies the requirements of law.

This Court has perused G.O.Ms.No.1142, dated 08.6.1954.

This contains guidelines or Rules relating to assignment of lands. Paragraph/Rule 5 of the said Government order *inter alia* is to the effect that the assignment of lands shall be subject to the condition that the land assigned shall be inheritable but not alienable. Paragraph 4(i) prohibits the assignment of grazing lands among others. A submission is made that when there is a prohibition of assigning grazing lands (kancha lands), it is quite improbable that subject land could have been assigned as alleged in the notice issued to the petitioner. The submission is rather farfetched and is liable to be rejected. As long as the land remains kancha land the same cannot be assigned. That is the purport of paragraph 4(1) of the G.O. But as rightly pointed out by the learned Government Pleader nothing prevents the competent authority to assign even kancha/grazing land if there were subsequent proceedings by the competent authority reclassifying the land and converting it to cultivable land or assessed waste dry land. In any event, the argument based on this ground does not further the case of the petitioner warranting a writ of Prohibition.

Learned Senior Counsel also pointed out that the third respondent is proceeding in great haste without giving adequate opportunity to the petitioner to verify the records and obtain the certified copies to effectively participate in the enquiry. This is vehemently denied by the learned Government Pleader who made a statement that the petitioner shall be furnished with all documents if not already furnished and that the petitioner's Advocate may approach the third respondent for verification of the records. This Court observes that third respondent may keep in mind the statement made by the learned Government Pleader herein. As the petitioner sought for a writ of Prohibition and did not specifically challenge the show cause notice issued under Rule 3 of the Rules, the precedent cited by the learned Government Pleader has no application.

In totality of the circumstances, the exercise of jurisdiction by third respondent cannot be said to suffer from inherent lack of jurisdiction. The petitioner has already submitted interim reply and is given liberty to file yet another explanation raising all the grounds if so advised. Needless to mention that the third respondent would consider all the grounds raised by the petitioner before passing any orders under the Act. Any observations made herein above in the order are intended only for the purpose of this order.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

April 13, 2007.

L.R.Copy be marked.
(By order)
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[1] W.P.Nos.10933 and 10934 of 2006, dated 23.11.2006

[2] AIR 1955 SC 233

[3] AIR 1955 SC 661

[4] AIR 1967 SC 1274

[5] (2003) 8 SCC 134

[6] (2004) 3 SCC 440

[7] Janes L.High 'A Treatise on Extraordinary Legal Remedies'; 3rd edn.1896; pp 705-706

[8] Ibid; p.709

[9] Ibid; p.709

[10] Ibid; p.710

[11] Ibid; pp 716-717

[12] De Smith: 'Judicial Review of Administrative Action'; 5th edition 1995, edited by Woolf and Jowell; p.702

[13] (1927) 1 KB 491